

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO. 58 OF 1987

Ramesh Madhavdas Wanwari of Bombay) .. Plaintiff.
Indian Inhabitant, carrying on)
business in the name and style of)
M/s.R.M.Traders as the sole)
proprietor thereof at 9/93-B,3rd)
Floor, 30th Road, Bandra, Bombay-5)

V/s.

1. Messrs Kaydee Conduit Pipes a)
firm, business at 16-B,)
Nandanvan Industrial Estate,)
Agra Road, Thane -4.)
2. Rashmi Kapildev Agarwal;) .. Defendants.
3. Sarita Kapildev Agarwal;)
4. Nitu Kapildev Agarwal, Defen-)
-dants Nos.3 & 4 being minors)
by their guardian ad litem,)
Smt.Rashmi Kapildev Agarwal.)
Defendants 2,3 & 4 are Indian)
Inhabitants r/s. Flat No.34 -)
Sahkar 3rd Floor, 'B' Rd,)
Churchgate, Bombay -20.)

Ms.Kavita Lalwani for the Plaintiff.

CORAM : S. A. BOBDE, J.

DATED : 19th JANUARY, 2007.

ORAL JUDGMENT :

. In this suit, filed as a summary suit, the plaintiff claims a sum of Rs.53,900/- with further interest on the sum of Rs.50,000/- at the rate of 18%

per annum.

2. On 20th April, 1987 this court granted conditional leave to the defendant Nos.1 and 2 to defend the suit upon depositing a sum of Rs.30,000/- within 16 weeks.

3. Apparently, the defendant Nos. 3 and 4 were granted unconditional leave to defend the suit. There is no evidence. The learned counsel for the plaintiff states that it has been verified that the defendant Nos.1 and 2 have not deposited Rs.30,000/-, as permitted. She, therefore, submits that the plaintiff is entitled to a decree against the said defendants on this count alone under Order 37, Rule 3, Sub-rule (6). More over, as pointed out by the learned counsel, none of the defendants have filed any written statement and therefore, she submits that the plaintiff may be granted a decree under Order 8, Rule 10 of the Code of Civil Procedure.

4. It appears from the plaint that the suit is based on bill of exchange drawn by the deceased Kapildev Aggarwal, as the sole proprietor of M/s. New Palghar Industries in favour of M/s.R.M.Traders for Rs.50,000/-. The said Bill was delivered to the plaintiff for

valuable consideration. The bill of exchange was duly presented to the first defendant M/s. Kaydee Conducit Pipes by the plaintiff and the defendants accepted the said bill of exchange. The date of the bill of exchange was 26.08.1985, as it is apparent from Exh.'A'. The first defendant, apparently failed and neglected to make payment to the plaintiff in spite of the demand.

5. Eventually by letter dated 23rd October, 1985 addressed to M/s. R.M.Traders, the Advocates for the first defendants asked for inspection of the bill, whereupon the first defendant denied their liability to pay the amount. Later on the plaintiff offered the inspection of the original bill of exchange and yet the defendants failed to make the payment of the said amount. The plaintiff has, therefore, filed the suit for Rs.50,000/- being the principal amount together with sum of Rs.3,900/- being interest thereon at the rate of 6% from 27th August, 1985 till 16th December, 1986, aggregating to Rs.53,900/-. The plaintiff has further claimed the interest on the said sum of Rs.50,000/- at the rate of 18% per annum being the prevailing commercial market rate.

6. Having perused the documents annexed to the plaint, the plaintiff's case does not appear to be

doubtful. More over, there is no written statement by any of the defendants and the defendant Nos. 1 and 2 have not even complied with the condition for leave to defend.

7. In the circumstances, I consider it appropriate to decree the suit in the sum of Rs.53,900/- with further interest at the rate of 12% on the sum of Rs.50,000/- till payment or realisation.

8. Decree be drawn up accordingly.

(S.A.BOBDE, J.)

.....